IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO. 589-SB OF 1996

DECIDED ON : 28-11-2007

Beni

....Petitioner

Versus

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present: Mr.Bipan Ghai, Advocate, for the petitioner

Ms.Shalini Atri,AAG, Haryana

MAHESH GROVER, J (ORAL)

On 13-06-1993, an incident took place in which Kishan Pal lost his life. Initially, he was admitted to B.K.Hospital in Fardiabad, and thereafter moved to Safderjang Hospital in Delhi. The police who had got information while on the way to the hospital at Delhi met Raj Pal-complainant who made a statement that they were 8 brothers and his brother Kishan Pal and Brahm Chand had been residing in House No.1 B WH/29 NIT Faridabad and they were engaged in the business of dairy farming. His another brother Rajbir who was residing at Sanjay Colony in Sector 23,Faridabad had come to meet his brother Kishan Pal. On a date prior to the occurrence i.e. on 12-06-1993 at about 7-30 pm. Jagat Singh who is also engaged in the same business came to the dairy of Kishan Pal and

asked him as to why he was attracting his customers and affecting his business adversely. On the day of the occurrence, the complainant and his brother Kishan Pal milked the buffaloes and thereafter Kishan Pal went from the dairly to supply the milk at about 7AM while the complainant went for a walk. When he reached the park ,there he saw Kishan Pal who was about to take a turn in the street and then Jagat Singh, Satish, Lal Chand and Beni accused intercepted him. All the four persons were armed with lathis in their hands. Jagat Singh asked the other accused to kill Kishan Pal. Beni, the present appellant is said to have given a lathi blow on the head of Kishan Pal from behind, as a result of which, he fell down. The complainant reached his brother and raised a noise whereupon Satish-accused gave lathi blow on his person. Thereafter, the complainant snatched the lathi of Lal Chand accused and he caused injuries to the aggressors. On hearing the noise, Jai Pal and Rajbir also came to the spot and thereupon the accused are said to have run away.

Kishan Pal was taken to B.K.Hospital by Rajbir in an unconcious state. He was referred to Safderjang Hospital in Delhi but instead he was taken to Jeewan Hospital, Delhi where he died due to the injury suffered by him. The post mortem was conducted in B.K.Hospital in Faridabad where the body was brought back.

The FIR was registered and the police completed its investigative process and submitted a challan against all the four persons prima facie finding their complexity in the said offence. The trial Court before whom the matter was committed after the submission of challan, charged all of them under the provisions of Sections 302/323/34 IPC.

All the accused persons pleaded not guilty and claimed trial.

The prosecution examined 10 witnesses to bring home the guilt of the appellant.

All the accused persons denied the allegations while recording their statements under Section 313 Cr.P.C. Jagat Singh, Satish and Lal Chand took up common defence that it was a false case and Lal Chand was not present at the spot while Beni pleaded that a false case was registered and further stated that in fact, buffaloes were purchased by Jagat Singh and Rajbir from Bhulli of Kaithal and Bhulli and Sultan had come to recover the price of buffaloes on 12-06-1993 in the evening. On 12-06-1993 Rajbir came to the dairy of Jagat Singh and Jagat Singh requested him to make payment of Bhulli upon which Rajbir abused Jagat Singh and then Satish gave a slap to Rajbir who went away after hurling abuses. Sat Pal was a constable in PS Sarai Khwaja and Raj Pal etc. were waiting for Satish near the ice-cream factory which was in the way which Satish used to follow. Rajbir, Kishan Pal and Sat Pal attacked Satish with lathis when he came from the side of part of 'C' Block. He came running from the dairy and injuries were caused to him also. Jagat Singh had reached the dairy. Two injures were caused to him by the complainant party. He yielded lathi in self defence and one injury each was caused to Kishan Pal and Rajpal. With the help of Sat Pal, a false case was registered against them. It was stated that he had suffered a fracture. Satish and Jagat also suffered multiple injuries at the hands of the complainant party but no action was taken agaisnt the complainant party.

This plea of the defence was supported only the appellant

while all the three accused replied in the negative. In support of his plea, DW1-Bhulli, DW2-Dr.V.K.Aggarwal were examined and thereafter the evidence was closed.

The trial Court came to the conclusion that the appellant was guilty of having committed an offence under section 304-II IPC and sentenced him to undergo RI for 7 years vide orders dated 19-08-1996 which the subject matter of the present appeal.

Learned counsel for the appellant contended that the undisputed facts on record are that there was a quarrel between the complainant and the appellant and that only one lathi blow was given on the head of the deceased which proved to be fatal. He further contended with elaborate reference to the findings recorded by the trial Court that the appellant was not the aggressor and , in fact, the incident had taken place near the dairy of the appellant and a clear finding was returned by the trial Court that the complainant party was the aggressor. The only reason for awarding conviction to the appellant was that he exceeded his right of private defence. It was further pleaded by him that the trial Court had completely overlooked the fact that the appellant had suffered 5 injuries out of which one was a fracture of leg which turned out to be grievous. He had also suffered one head injury and Satish who also belonged to his faction and is related to him, suffered 5 injuries. Jagat Singh has suffered one injury. The deceased suffered only one injury on the head which turned out to be fatal and the complainant suffered only one injury on the head. In this view of the matter, learned counsel for the appellant contended that it cannot be said that the appellant had exceeded his right of self-defence . He was faced with an aggressive group of people. It was but natural for him to

react. On the strength of this, it was pleaded that the appellant was entitled to acquittal.

On the other hand, learned counsel for the State contended that the conviction and sentence is perfectly in order as the deceased had suffered a fatal blow on the head which according to him was largely unprovoked.

I have heard the learned counsel for the parties and have perused the record.

The trial Court while examining the evidence had clearly returned a finding that the place of occurrence is in close proximity to the dairy which is run by the appellant and further went on to hold that it was complainant and his brother-Kishan Pal who were the aggressors. It was also a conceded case that the appellant had suffered injuries at the hands of the complainant party which included a fracture. The testimony of PW9-Dr.A.K.Gupta reveals the following injuries on the person of the appellant, Satish and Jagat respectively :-

"*1. Lacerated wound 2.5x0.5 cm muscle deep on right parietal region. Bleeding was present.*

2. *Reddish contusion 20 cm x 4.0 (20.00 cm x 4.0 cm) on left scapular region of back.*
3. *Reddish contusion 20.0x4.0cm on right scapular region of back.*
4. *Diffused swelling on lateral aspect of left ankel joint, accompanied by a reddish contusion 5.0x2.0 cm on it.*
5. *Reddish contusion 1.0x2.0 cm on posterior aspect of left shoulder joint.*

x-ray examination was advised in respect of injuries Nos. 2, 3 and 4. Said injuries were kept under observation. All the injuries were said to be caused with a blunt weapon and wtihin proper duration of 24 hours."

Injuries on the person of Satish Kumar

1- Reddish contusion 15.0 cm x 2.0 cm on posterior aspect of left fore-arm in its upper third part. Movements were restricted and painful. X-ray examination was advised.

2- Diffused swelling on the left fore-arm in its lower third part accompanied by reddish contuison 2.5x2.5 cm. X-ray examination was advised.

3- Reddish contusion 8.0x2.0 cm on medial aspect of right knee.

4- Reddish contusion 8.0x5.0 cm on lateral aspect of left knee.

5- Reddish abrasion 3.0 x 2.5 cm on front of right fore-arm.

Injuries on the person of Jagat Singh

1- A reddish contusion 10.0 x 5.0 cm on palmer aspect of left hand. X-ray examination was advised.

It was stated to be caused by blunt weapon within duration of 24 hours.

Having regard to the aforesaid, the learned trial Court was required to test the plea of self -defence in the backdrop of the injuries which largely reflected the intent and threat of the aggressors. A person who is faced with a threat perception is entitled to react in order to save

himself. Whether the reaction and the consequent action taken by such a person is in excess of his right of self defence would be a matter of fact to be established and inferred from the evidence on record.

Concededly the appellant had suffered numerous injuries at the hands of his aggressors and had also suffered fracture. One lathi blow was attributed to him which proved to be fatal. In the melee which follows in a group violence where a person is subjected to extreme aggression, the reaction which follows from the victim is spontaneous and is never measured. The intent at that time is to ward off the aggressor and to preserve oneself which is a natural instinct inherent in every living being. The intention is never to cause violence but violence to offer defence by which is more of a defensive mechanism unleached as a reflex measure to preserve one's own existence. The consequent death of deceased Kishan Pal was more as a will of the Providence rather than willing and intending injury of the appellant.

In this view of the matter, it cannot be said conclusively that the appellant had exceeded his right of self-defence. Rather it has been held to the contrary to say that he was very much within his right of defence and was not liable.

This appeal is accordingly accepted and the appellant is acquitted of the charge against him.

28-11-2007 **[Mahesh Grover]**
MandeepKaur **Judge**